



IN THE COURT OF CLAIMS OF THE UNITED STATES

Cong. 17766

S. R. BRACKIN,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

**DEFENDANT'S MOTION FOR LEAVE TO FILE
MOTION OUT OF TIME.**

Now comes the defendant, by its Assistant Attorney General, and moves for leave to file the accompanying motion out of time.

SAMUEL O. CLARK, JR.,
Assistant Attorney General.



IN THE COURT OF CLAIMS OF THE UNITED STATES

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S. R. BRACKIN,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

DEFENDANT'S MOTION.

Now comes the defendant, by its Assistant Attorney General, and shows to the Court the following:

On April 6, 1942, the Court, on special findings of fact and opinion, dismissed the petition herein.

The pendency of other cases in United States District Courts, involving the National Surplus Cotton Tax Exemption Certificate Pool of 1935, prompted the Attorney General to direct an inquiry to the Secretary of the Treasury under date of June 8, 1942, a copy of the letter being attached hereto as Exhibit 1.

A copy of the reply to the letter from the Attorney General under date of July 2, 1942, and signed by D. W. Bell, Acting Secretary of the Treasury, is also attached hereto as Exhibit 2.

The Attorney General propounded certain questions as to the status of monies in the Treasury which certain cotton producers are seeking to recover on account of postal

money orders, cashiers' checks, etc., delivered to the pool manager in accordance with the regulations pertaining to the Bankhead Cotton Act of 1934. Answers to these questions are given in the letter from the Acting Secretary of the Treasury.

The information obtained from the Acting Secretary of the Treasury applies to matter dealt with by the Court in its special findings of fact and opinion herein, particularly in finding 10, and in the second and third paragraphs on page 12 of its opinion.

Wherefore, if in the judgment of the Court, any material inconsistency appears between the language in its special findings and opinion and the answers of the Acting Secretary of the Treasury to the questions propounded by the Attorney General, the defendant moves that the Court exercise its discretion and conform the special findings and opinion to such reconciliation as is deemed appropriate.

SAMUEL O. CLARK, JR.,
Assistant Attorney General.

Copy.

EXHIBIT No. 1.

June 8, 1942.

The Honorable the Secretary of the Treasury.

DEAR MR. SECRETARY :

This Department is now handling certain litigation in the courts involving the National Surplus Cotton Tax Exemption Certificate Pool of 1935, which was established and put into operation by virtue of Section 55 of the Regulations pertaining to allotments and tax exemption certificates, under the Cotton Act of April 21, 1934 (Bankhead Cotton Act of 1934, Public No. 169, 73rd Cong., 48 Stat. 498). In connection with the defense of this litigation, it is necessary to secure certain information from your Department. In this litigation surplus cotton producers are seeking recovery on account of postal money orders, cashiers' checks, etc., delivered to assistants in cotton adjustment under the terms of the Regulations above referred to. The defense of these actions presents this Department with the following questions:

1. After their receipt, were moneys held in the Treasury as funds of the United States?
2. Was there any change in the status of the moneys after the repeal of the Bankhead Act?
3. When received, did these moneys go into the "general funds" of the Treasury?
4. Whether, after repeal of the Bankhead Act, these moneys were funds subject to appropriation by Congress.
5. If so, whether after receipt, the moneys were appropriated moneys under the 1934 Appropriation Act?
6. Whether at any time there was any other appropriation act affecting these moneys?
7. Whether at any time the moneys could be withdrawn from the Treasury of the United States, except pursuant to an appropriation of Congress.

8. Does Congress have the sole power of disposition of the unexpended balance, if any, of these moneys?

9. Whether the moneys could be used to defray the ordinary expenses of the Government?

10. If these moneys cannot be used to defray the ordinary expenses of the Government, what then is their status in the Treasury?

11. Is the balance shown in the accounts set up under the 1934 Appropriation Act a charge against the general funds of the Treasury in the same sense that a balance in any appropriation account is a charge against the general funds of the Treasury?

I shall appreciate it if you will let me have an answer to these questions as soon as possible since appropriate action must be taken by this Department in connection with the defense of this litigation within a very short time.

Sincerely yours,

(Sgd.) FRANCIS BIDDLE,
Attorney General.

THE SECRETARY OF THE TREASURY

Washington

July 2, 1942.

My dear Mr. Attorney General:

Reference is made to your letter of June 8, 1942, requesting certain information with respect to moneys received by the Treasury Department in connection with the National Surplus Cotton Tax Exemption Certificate Pool of 1935. The specific questions concerning which you requested advice are separately considered below:

"1. After their receipt, were the moneys held in the Treasury as funds of the United States?"

After their receipt by this Department, moneys derived from the operations of the 1935 National Surplus Cotton Tax Exemption Certificate Pool were credited to the trust

fund receipt account "8530, Deposits of Miscellaneous Contributed Funds, Department of Agriculture." Under the provisions of the Permanent Appropriation Repeal Act of 1934, the amount of such funds credited to this account were appropriated and disbursed for authorized purposes and in accordance with procedures prescribed by law. In order to reflect such appropriation they were set up in a trust fund appropriation account "3T030, Miscellaneous contributed funds, Department of Agriculture" (later changed to 12X8200). (For treatment of the moneys on receipt by the Treasury see answer to question 3.)

In this connection, your attention is directed to photostatic copies of various documents transmitted to Assistant Attorney General Clark on February 20, 1942, and listed under the heading "Division of Bookkeeping and War-rants" in the covering letter of that date signed by Lawrence J. Bernard, Assistant General Counsel. Your attention is further directed to photostatic copies of certain documents which were transmitted to Assistant Attorney General Clark on May 16, 1942, and were listed in the second paragraph of the covering letter of that date signed by Mr. Bernard.

"2. Was there any change in the status of the moneys after the repeal of the Bankhead Act?"

Subsequent to the repeal of the Bankhead Act there was no change in the status of these moneys in so far as the accounts of the Treasury Department were concerned.

"3. When received, did these moneys go into the 'general funds' of the Treasury?"

All funds received by the Treasurer of the United States from whatever source are deposited and held in a single fund commonly known as the General Fund of the Treasury. Accordingly, the moneys received from the Cotton Tax Exemption Certificate Pool of 1935 were commingled with all other funds received by the Treasurer of the United States from customs duties, internal revenue, sale of public debt obligations, and from miscellaneous sources of every kind and description. They were not segregated from other

receipts of the Government. These moneys, as well as any other money in the general account of the Treasurer of the United States were paid out by the Treasurer pursuant to appropriations made by the Congress and in accordance with procedures prescribed by law. The terms "receipts", "moneys", and "funds" as used herein refer to cash (including the proceeds of checks or money orders, etc.) and are to be distinguished from the term "accounts" which is merely an accounting expression to denote classification of receipts, appropriations, and expenditures, as will become apparent from the answer to Question No. 4.

"4. Whether, after repeal of the Bankhead Act, these moneys were funds subject to appropriation by Congress."

Appropriations when made by the Congress and set up on the books of the Treasury Department do not represent a specific amount of cash set apart from other funds in the Treasury to be held until expended for the purposes specified in the appropriation accounts. They are not carried on the books of the Treasurer of the United States. They are only record accounts on the books of the Secretary of the Treasury and merely represent the limit to which administrative and disbursing officers may obligate and disburse Government funds for specified purposes. The Cotton Tax Exemption Certificate Pool of 1935 was not a fund in the sense that such term is ordinarily understood but, like appropriations, was merely an account representing the limit of authority to make disbursements for purposes indicated by the title of the account. After repeal of the Bankhead Act, Congress, therefore, could have repealed the appropriation of the amount credited to the account in question or could have reappropriated the balance therein for some other purpose.

"5. If so, whether after receipt, the moneys were appropriated moneys under the 1934 Appropriation Act?"

As stated in the answer to question 1, the moneys were appropriated under the provisions of the Permanent Appropriation Repeal Act, 1934.

“6. Whether at any time there was any other appropriation act affecting these moneys?”

There appears to have been no appropriation act affecting the moneys here involved, and the books of the Treasury do not reflect any subsequent appropriation act affecting such moneys.

“7. Whether at any time the moneys could be withdrawn from the Treasury of the United States, except pursuant to an appropriation of Congress.”

In view of the provision contained in section 9 of Article I of the Constitution of the United States of America that “No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law” such moneys could be withdrawn only pursuant to an appropriation made by the Congress. Since, as stated in the answer to question 1, these moneys have been appropriated by Congress, they may at present be withdrawn only pursuant to that appropriation. (See also answer to question 8.)

“8. Does Congress have the sole power of disposition of the unexpended balance, if any, of these moneys?”

It may be stated that Congress does ultimately have the sole power of disposition of the unexpended balance. However, if the pending litigation is cleared up and if Congress takes no further action, there appears to be no reason why the unexpended balance cannot be disbursed pursuant to the terms of the existing appropriation. For details of the procedure which would be followed in making the disbursements see paragraphs 4 and 5 of the letter of February 11, 1942, addressed to Assistant Attorney General Clark by Lawrence J. Bernard, Assistant General Counsel.

“9. Whether the moneys could be used to defray ordinary expenses of the Government.”

This question has been covered in the answers to questions 3 and 4.

“10. If these moneys cannot be used to defray the ordinary expenses of the Government, what then is their status in the Treasury?”

Answers to preceding questions render consideration of this question unnecessary.

“11. Is the balance shown in the accounts set up under the 1934 Appropriation Act a charge against the general funds of the Treasury in the same sense that a balance in any appropriation account is a charge against the general funds of the Treasury?”

Expenditures from the Cotton Tax Exemption Certificate Pool Account can be considered a charge against the General Fund of the Treasury in the same sense as are expenditures from any appropriation account. In other words, any withdrawals from the Cotton Tax Exemption Certificate Pool account must be made ultimately from the General Fund. In this connection it should be pointed out that the books of the Treasury are not set up in such a manner that the various appropriations appear as liability items offsetting asset items held by the Treasurer of the United States in the General Fund. At any one time the moneys in the General Fund amount to only a small percentage of the total unexpended balances of amounts appropriated by Congress.

The Treasury Department will be glad to furnish any further information at its disposal in connection with the above questions, and to cooperate with you to the fullest extent in connection with the pending litigation.

Very truly yours,

(Sgd.)

D. W. BELL,
Acting Secretary of the Treasury.

The Honorable the Attorney General of the United States.

(1892)

